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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A.No. 303 of 2005
Date of decision:12.12.2006

M/S Fathudhinga Rice Mills ...Appellant

Versus

The Commissioner of Income-tax Jalandhar ...Respondents

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present:Mr.Sanjay Bansal, Advocate for the appellant.

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JUDGMENT

This appeal has been preferred under Section 260-A of Income Tax Act, 1961(for short "the Act") proposing the following substantial questions of law arising out of the order dated 28.2.2005 of the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar passed in ITA No.548 (ASR)/1999 in respect of the assessment year 1993-94:-

"i) Whether the Tribunal misdirected itself in law as well as on facts in recording its conclusion based on irrelevant findings and in ignoring uncontroverted relevant material on record.

ii) Whether on an application of the correct principles of law, was the Tribunal legally correct on the facts and in the circumstances of the case, in upholding the order of the Assessing Officer whereby the latter had estimated the income from unaccounted sale by applying G.P. rate of 4.28% as against the correct Gross profit rate of 2.8%?

iii) Whether the impugned order passed by the Tribunal is perverse and a result of non application of the mind?

The assessee had filed return showing the income of Rs.8,570/- for the assessment year 1993-94, which was processed under Section 143(1)(a) of the Act. During search and seizure operation at the business premises of the assessee, certain incriminating documents were found and case was

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taken thereafter for scrutiny and notice under Section 148 of the Act was issued to the assessee.

The Assessing Officer made addition on account of unaccounted sale of rice as was found to be entered in the Note Book (Annexure A-6). It was also found entered in the note book that Truck No.PBK-5177 and PCJ-5177 were used for sale of the rice and the said trucks belonged to assessee. The Assessing Officer examined peak of the daily sale and on that basis calculated the profit. Another diary entry Annexure A-7 was also found which contained entries in respect of the unexplained investment. CIT(A) while rejecting the prayer for permitting the appeal to be withdrawn issued notice for enhancement and made further enhancement to the addition. On appeal, the Tribunal upheld the order of the CIT(A). Relevant findings recorded by the Tribunal are as under:-

> "On consideration of the above facts, we are of the view that the authorities below rightly rejected the claim of the assessee. No evidence was filed before the A.O. or CIT(A) to show that the assessee was earning commission of 2%. No evidence of expenses made or claimed was filed before the authorities below. The A.O. calculated the peak investment on a particular date for which no explanation is filed by the assessee. The A.O. did not make separate addition of Rs.5,65,268/- as the main addition was made in a sum of Rs.10,28,471/-. Therefore, the submission of the assessee is liable to be rejected. The assessee further claimed that G.P.rate of 2.80% may be applied. Further this fact is not substantiated as assessee failed to prove by any material that the assessee incurred any expenses while earning income from the transaction outside the books of accounts. The A.O. has taken a reasonable view while framing the assessment in the matter. The CIT(A) rightly enhanced the income as the A.O. has given benefit of investment carried forward on wrong figure. It was not disputed by the learned counsel for the assessee. Considering the facts of the case, we do not find any justification to interfere in the order of the CIT

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(A). We confirmed the same and dismiss this ground of appeal of the assessee."

Learned counsel for the assessee-appellant submitted that the view taken by the Tribunal was perverse as expenditure incurred on generator, bardana repair, freight inward and quality cut were not taken into account. The said expenditure had been incorporated in the books of account, which were not rejected. The assessee had claimed the said deductions in the profit and loss account and not in the trading account, thus gross profit was calculated without taking into account the said expenditure.

We are unable to accept the submission made. The books of account maintained by the assessee did not correctly reflect the transactions of business and were inconsistent with the note book-Annexure A-6 and diary entry Annexure A-7, seized at the time of search. Expenditure in question had already been claimed by the assessee. Having regard to the transactions found out side the books of account, the assessment was made on the basis of estimate. In such a situation some amount of guess work could not be ruled out. The view taken by the Tribunal cannot be held to be perverse.

In view of the above, we do not find that any substantial question of law arises for consideration of this Court.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

December 12,2006
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(Rajesh Bindal)
Judge